



Review and Appeals Policy

Policy version 1 and revision information

Policy Authorised and Adopted by:	ASAPD Board	Original Issue:	June 2024
Policy Maintained by:	ASAPD CEO	Next Review:	June 2025

1. Introduction

This Policy:

- (a) Seeks to guide Relevant Organisations on the processes for resolving Disputes;
- (b) Does not cover Personal Grievances, conduct and disciplinary matters arising under policies that form part of the National Integrity Framework or other Relevant Organisation policies or proceedings relating to the suspension or expulsion of Members pursuant to clause 4.10 of the ASAPD Constitution; and
- (c) Is subject to the ASAPD Constitution and if there is any inconsistency, the Constitution will prevail.

2. Definitions

In this Policy the following words have the corresponding meaning:

Activity means a sporting contest, match, competition, event, or activity (including training), whether on a one-off basis or as part of a series, league, or competition, sanctioned or organised by a Relevant Organisation.

Alternative Dispute Resolution is a collective term for processes, other than arbitration, such as mediation, conciliation or case appraisal that may be used to resolve the Dispute under this Policy.

Appeals Tribunal means the NST Appeals Division or other appeals tribunal (including an appeals tribunal established internally by a Relevant Organisation) established to hear an appeal of a decision of a Hearing Tribunal.

ASAPD means Australian Sporting Alliance for People with a Disability Limited.

Dispute means any dispute between Relevant Organisations, that arises in the context of their involvement in an Activity or business of a Relevant Organisation other than the categories of disputes set out in clause 3.2(b).

Hearing Tribunal means the NST General Division or other first instance tribunal (including a tribunal established internally by a Relevant Organisation) established to conduct a hearing under this Policy.

Member means each company or incorporated association that is recognised as a member of ASAPD under the ASAPD Constitution.

National Integrity Framework means the “National Integrity Framework” adopted by a Relevant Organisation from time to time, as developed by Sport Integrity Australia and consisting of the following five policies:

- (a) Safeguarding Children and Young People Policy;
- (b) Competition Manipulation and Sport Gambling Policy;
- (c) Improper Use of Drugs and Medicine Policy;
- (d) Member Protection Policy;
- (e) Complaints, Disputes and Discipline Policy (the CDDP).

NST means the National Sports Tribunal established under the NST Legislation.

NST Eligible Matter means an alleged breach that is a kind of dispute that falls within the jurisdiction of the NST¹.

NST Legislation means the *National Sports Tribunal Act 2019* (Cth) (**NST Act**), and any legislative instruments made under the NST Act as may be in force from time to time, including the *National Sports Tribunal Rule 2020* (Cth) (**NST Rule**), *National Sports Tribunal (Practice and Procedure) Determination 2021* (Cth) and *National Sports Tribunal Act 2019 - Principles for Allocating a Member to a Dispute 2020*.

Personal Grievance means any type of interpersonal conflict or dispute between individuals or between individuals and Relevant Organisations that does not engage the rules, policies or by-laws of a Relevant Organisation.

Policy means this Review and Appeals Policy.

Protected Disclosure means, where a Relevant Organisation is a "regulated entity" under the whistleblower laws in the *Corporations Act 2001* (Cth), a disclosure of information to the Relevant Organisation that qualifies for protection under those laws.

Relevant Organisation means any of the following organisations:

- (a) ASAPD.
- (b) Members; and
- (c) Any other organisation that has agreed to be bound by this Policy.

3.0 Jurisdiction

3.1 To Whom the Policy Applies

This Policy applies to Relevant Organisations.

3.2 When the Policy Applies

- (a) This Policy applies to Disputes between Relevant Organisations
- (b) The Policy does not apply to the following:
 - (i) A breach of any of the policies that form part of the National Integrity Framework.
 - (ii) A breach of another Relevant Organisation policy where that breach is covered by the CDDP of a Relevant Organisation, or any other specific dispute resolution process.
 - (iii) A Personal Grievance.
 - (iv) A Protected Disclosure.
 - (v) A breach of any other Relevant Organisation policy in respect of which a Relevant Organisation expressly excludes the application of this Policy.
 - (vi) An allegation or information that is mischievous, vexatious, or knowingly untrue; and

¹ See NST Act sections 5(2) and 6(2) and NST Rule section 7.

4. Dealing with Disputes

4.1 Informal steps for resolving Disputes under this Policy

- (a) Relevant Organisations are encouraged to attempt to resolve any Dispute that is subject to this Policy amongst themselves in the first instance.

4.2 Alternative Dispute Resolution

- (a) If a Relevant Organisation considers the Dispute may appropriately be resolved through Alternative Dispute Resolution, it may seek in writing the consent of the parties to the Dispute to refer the Dispute for Alternative Dispute Resolution. If the parties to the Dispute give their consent, they must participate in the Alternative Dispute Resolution in good faith.
- (b) If a Dispute relates to an NST Eligible Matter, ASAPD may refer the Dispute to mediation, conciliation, or case appraisal in the NST General Division.
- (c) ASAPD is responsible for making the application for Alternative Dispute Resolution at the NST. The application fee may be paid by one party, or by the parties together, apportioned as agreed between them. In the absence of agreement, they will be apportioned equally. Service charges may also be payable to the NST, which will be negotiated as between the parties to the dispute and the NST and determined by the NST CEO.

4.3 Independent Facilitated Resolution of Dispute

- (a) Any mediation or conciliation (other than where conducted by the NST) will be undertaken in accordance with the rules prescribed by the Relevant Organisation (internal) or the provider (external) as the case may be.
- (b) For external mediation, any costs associated with appointing a facilitator will be agreed before the facilitated resolution session commences and will be apportioned evenly between the parties (unless otherwise agreed between the parties).

4.4 Failure to Resolve Dispute

- (a) If the Dispute is resolved through Alternative Dispute Resolution under this clause 4, the Dispute will be considered closed under this Policy. Any ongoing issues between the parties to the Dispute must be dealt with by them in their personal capacity.
- (b) If Alternative Dispute Resolution does not resolve the Dispute or, prior to a referral to Alternative Dispute Resolution, the Relevant Organisation considers that the Dispute is more appropriately referred to a Hearing Tribunal, the Relevant Organisation may refer the Dispute to a Hearing Tribunal.
- (c) All Disputes must be submitted by the parties to the Dispute to a hearing, and appealed if required, in accordance with this Policy before commencing any proceedings relating to the Dispute in a court of law.

5. Hearing Tribunals and Appeals

5.1 Referral to a Hearing Tribunal

- (a) A Relevant Organisation may refer a Dispute directly to a Hearing Tribunal to arbitrate the Dispute.
- (b) If the matter is a NST Eligible Matter, the Dispute may be referred by ASAPD to the NST General Division for arbitration. ASAPD is responsible for making the application to the

NST. Payment of the NST fees will be as agreed by the parties or, in, the absence of agreement, apportioned equally.

- (c) If the Dispute is not referred to the NST, it will otherwise be referred to a Hearing Tribunal convened internally either at the ASAPD level or other Relevant Organisation level.

5.2 Hearing Tribunals

- (a) If arbitration is sought in either the NST General Division or an internal Hearing Tribunal, the Hearing Tribunal will arbitrate the Dispute.
- (b) If arbitration is sought in the NST General Division, the NST will arbitrate the Dispute in accordance with the NST Legislation.
- (c) The Hearing Tribunal will notify the parties of the decision in accordance with its relevant procedures.

5.3 Appeals

- (a) Each party to a Dispute is entitled to appeal the decision of a Hearing Tribunal under this Policy (each an **Appellant**) solely on the following grounds:
 - (i) The Hearing Tribunal failed to abide by this Policy and/or the NST Legislation (as the case may be) and such failure resulted in a denial of natural justice; and/or
 - (ii) No reasonable decision maker in the position of the Hearing Tribunal, based on the material before them, could reasonably make such a decision.
- (b) Appeals from the NST General Division must be referred to the NST Appeals Division. Appeals from internal Hearing Tribunals may be referred to the NST (an appeal from a Relevant Organisation Hearing Tribunal will be referred to the NST Appeals Division). Payment of the NST fees will be as agreed by the parties or, in the absence of agreement, fees and service charges will be apportioned equally.
- (c) The procedure for an appeal in the NST Appeals Division will be in accordance with the NST Legislation.
- (d) The Appeal Tribunal's arbitration of the appeal:
 - (i) must determine, on the balance of probabilities, whether one or both grounds of appeal (as applicable) are proven and must not, except where provided for by the NST Legislation, rehear the matter or the facts of the Dispute; and
 - (ii) may result in the Appeals Tribunal:
 - (A) dismissing the appeal;
 - (B) upholding the appeal; and/or
 - (C) varying any finding made by the Hearing Tribunal under this Policy.
- (e) The Appeal Tribunal will notify the parties to the proceeding of the decision in accordance with its relevant procedures.

5.4 Confidentiality

- (a) All Disputes (and all information disclosed in relation to them), including the outcomes of any facilitated resolution process or hearing process will be kept confidential by the

Relevant Organisation, and will not be disclosed to any third parties, except as provided in this clause.

- (b) Any Relevant Organisation may disclose information as required or authorised by law.
- (c) Subject to this clause, decisions around appropriate disclosure of information will be addressed on a case-by-case basis. Disclosure of information to parties not directly affected by the Dispute may be restricted.

6. Interpretation and other information

6.1 Commencement

This Policy commences on the date outlined on the front cover (**Commencement Date**).

6.2 Prior Disputes

All Disputes, including Disputes that commenced prior to the Commencement Date, can be dealt with under this Policy.

6.3 Interpretation

- (a) Any document required to be provided under this Policy may be given by:
 - (i) Sending it to an email or other electronic address, or to a postal address, nominated by the recipient party; or
 - (ii) Email, post or hand delivering it to that party's registered office.
- (b) A document is taken to have been received under this Policy if sent by email or other electronic transmission, on the date of transmission, or if hand delivered, on the date of delivery or if sent by post, 5 business days after it was sent.

6.4 Amendment

- (a) ASAPD may amend this Policy from time to time and must make the new version available on its website as soon as possible, including the date on which any amendments take effect.
- (b) Any Dispute under this Policy which is not finalised at the time of an amendment to this Policy will continue to be processed under the substantive provisions of this Policy in force at the time a Relevant Organisation receives notice of the Dispute unless a Hearing Tribunal determines the principle of "lex mitior" appropriately applies in the circumstances.